No.10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

A.O. NO. 1183 of 2001
(Old No. 15 of 2000)

National Insurance Company Ltd.

Versus

Smt. Kunwari Devi and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 05-04-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 1183 OF 2001
Old F.A.F.O.No. 15 of 2000

National Insurance Company Ltd.
Registered Office-3 Middleton Street, Calcutta,
Through its Assistant Manager, D.Sarkar
Presently posted at Division Office
25, M.G.Marg, Allahabad.

… Appellant-O.P.

Versus

1. Smt. KunwariDevi W/O Kedar Singh
   R/O Patyun, Patwari Circle Bhiri,
   Tehsil Ukhimath, District Chamoli. (Claimant)
2. Jaspal Singh Negi S/O not known,
   R/O village Kaushalpur, Patwari Circle Chandrapur
   Tehsil Ukhimath, District Chamoli
   (owner of Truck No. UP 08/3179).
3. Satish Singh S/O Daulat Singh, R/O village Kyarak
   Barsudi, Patwari Circle Chandrapur, Tehsil Ukhimath,
   District Chamoli. (Driver of Truck No. UP 08/3179)

… Respondents

Sri D.S.Patni, Adv. learned counsel for the appellant.
Sri R.P.Nautiyal, Adv. for the respondents.

Dated April 05, 2006.

P.C. : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 06-10-1999, passed by the Motor Accident Claims Tribunal/District Judge Chamoli(***in short the Tribunal***) in Motor Accident Claim Petition No. 23 of 1997, Smt. Kunwari Devi Vs. Jaspal Singh Negi and others, whereby compensation of Rs. 25,000/-/- has been awarded in favour of the claimant for the injuries sustained by her along with interest @ 10% per annum from the date of claim petition till the date of payment as mentioned in the impugned order.

Brief facts of the case giving rise the present appeal are that the Smt. Kunwari Devi, the claimant, sustained injuries in a motor vehicle accident on 1.4.1997 due to rash and negligent driving by the driver of Truck No. U.P. 08/3179 Tata- 608 at about

9 p.m. near Chenagaad Guptakashi Basukedar motor road. In the accident, the claimant became permanent disabled and she was admitted in the hospital since 2.4.97 to 29.4.97 and incurred expenses of Rs. 2,500/-. It is also alleged that sum of Rs. 30,000/- was incurred by her in connection with her treatment etc. The offending vehicle was owned by Jaspal Singh and it was duly insured with the National Insurance Company. The claimant-injured has filed claim petition for compensation of Rs. 1,00,000/-.

The O.P.No.1, owner of the truck, filed his written statement and contested the claim petition. He has admitted the motor accident involving Truck in question as well as ownership and insurance of the vehicle. It has been stated that the truck in question was going from Basukedar to Guptakashi and at the place of accident, the road was blocked by mob of the people. The driver tried to control the vehicle but failed, which resulted into the accident. The driver was not rash and negligent. The liability if any to pay compensation lay upon the Insurance Company. The O.P. No.2 driver of the vehicle also filed his written statement and has taken similar stand as that of the owner.

The Insurance Company also filed its written statement and contested the case. It has denied the allegations made in the claim petition and has asserted that the owner did not file any insurance and driving licence, therefore, the insurer was not liable to pay compensation.

Learned Tribunal framed following issues in the case:-

1. Whether the accident occurred due to negligence of the driver of truck No. U.P. 08/3179 and Kunwari Devi sustained injuries in the accident?

2. Whether the accident occurred as pleaded by O.P.No.1 in para 11 of the W.S. filed by him?

3. Whether the claimant is entitled to Rs. One lac as compensation amount?

4. Whether the truck involved in the accident had a valid insurance.

5. Whether the driver tried to commit the murder as pleaded by O.P.No. 3 in para 21 of the W.S.?

6. Whether the claimant is entitled to any amount.

After hearing both the parties and perusing the evidence on record, the learned Tribunal took up Issue Nos. 1, 2 and 5 for decision. The learned Tribunal came to the conclusion that Kunwari Devi sustained injuries in the accident occurred on 1.4.1997 at about 8-9 p.m. and the driver of the offending truck was rash and negligent. Issue Nos. 3 and 6 were also taken uup together for decision and on the basis of othe evidence led by the parties, the learned Tribunal came to the conclusion that the claimant remained admitted in the hospital for 27 days and she suffered pain and mental agony. The Tribunal after taking into consideration all the aspect of the case held that the claimant Kunwari Devi is entitled to compensation of Rs. 25,000/-. Lastly, the learned Tribunal took Issue No. 4 which was framed on the point of valid insurance. The insurance of the vehicle was not challenged. Only the driving licence filed by the owner as paper no. 42-C was challenged. After considering the factual and legal aspect on this point, the learned Tribunal ultimately held that the Insurance Company has failed to discharge its burden by cogent evidence and decided the issue against the Insurance Company-appellant.

In this appeal, the validity of the driving licence has been vehemently challenged on behalf of the Insurance Company. It has been submitted by the learned counsel for the appellant-insurance company that Insurance Company has led evidence before the Tribunal to show that the driver of the truck was not having a valid driving licence. The driving licence held by the driver was issued by the Licensing Authority of Himachal Pradesh and the truck was being driven in district Chamoli.

I have heard learned counsel for the parties and have perused the material on record including the impugned award.

So far as the validity of driving licence of the truck driver on the date of accident is concerned, it is incumbent upon the Insurance Company to lead evidence to the effect that the owner/insured was guilty of negligence or failed to exercise reasonable care in that regard so as to absolve itself from the liability of payment of compensation. The point of validity of driving licence was dealt with the learned Tribunal in the impugned judgment. The Insurance Company had challenged the driving licence before the learned Tribunal and it has examined D.W.2 Man Singh. According to the Insurance Company the driver Satish was not having a valid driving licence. In this case, owner of the vehicle Jaspal Singh has been examined as D.W.1, who has specifically stated that before employing Satish as a driver, he had seen the original driving licence possessed by him. The only ground of challenged raised by the Insurance Company is that the driver was not having a valid driving licence on the date of accident. But this fact that the driver was not having a valid driving licence in itself is not sufficient to absolve the insurer from its liability to pay compensation unless it is proved by the insurance company that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time. In the instant case, the appellant-insurance company has not led any evidence before the Tribunal to establish that the insured was negligent or he failed to exercise reasonable care in that regard. It has not been shown as to whether it was within the knowledge of the owner of the truck that the truck driver was not having a valid driving licence at the relevant time. I am fortified in my view by the Apex Court judgment in the case of National Insurance Co. Ltd.

V. Swaran Singh [(2004) 3 SCC 297]. In para 110(iii), the Apex Court has observed as under:-

"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence of failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."

Again, in a subsequent case ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. and others" [(2004) 3 Supreme Court Cases, 386]*** the Apex Court has observed that ***"Motor Accident- Insurance company neither pleading nor leading evidence that the offending driver had not licence- Claims Tribunal awarding compensation- Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicles- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."***

Having gone through the entire material on record particularly in view of the categorical statement of D.W.1 Jaspal Singh, the owner of the vehicle, I am fully convinced that the appellant-Insurance Company has miserably failed to discharge its burned on the point of breach of policy condition by the insured in accordance with the law laid down by the Apex Court in the aforesaid two judgments. The Insurance Company was required to prove the negligence on the part of the owner of the vehicle by cogent evidence, which it failed to do.

In the result, the appeal preferred by the Insurance Company is devoid of merit and deserves to be dismissed.

The appeal is hereby dismissed. The impugned award dated 6.10.1999 passed by the Motor Accident Claims Tribunal Chamoli is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B.S. Verma, J.)

RCP